

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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In re	:
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	:
FEDERAL-MOGUL GLOBAL, INC., et al. :	Chapter 11
T&N LIMITED, et al., :	
Debtors. :	Jointly Administered
-----X	
	:
THE OFFICIAL COMMITTEE OF	:
ASBESTOS CLAIMANTS and	:
ERIC D. GREEN, as the	:
LEGAL REPRESENTATIVE FOR	:
FUTURE ASBESTOS CLAIMANTS,	:
	:
Plaintiffs,	:
	:
v.	:
	:
ASBESTOS PROPERTY	:
DAMAGE COMMITTEE,	:
	:
Defendant.	:
	:
	:
-----X	

Case No. 05-00059 (JHR)

Objection Deadline: May 4, 2005 at 4:30 p.m.  
Hearing Date: To be determined.

**APPLICATION TO MODIFY THE ORDER PURSUANT TO  
11 U.S.C. §§ 327 (a) AND 328(a) APPROVING THE RETENTION AND  
EMPLOYMENT OF NAVIGANT CONSULTING, INC, AS ASBESTOS  
CLAIMS CONSULTANTS FOR THE OFFICIAL COMMITTEE OF ASBESTOS  
PROPERTY DAMAGE CLAIMANTS, NUNC PRO TUNC TO OCTOBER 26, 2004**

TO THE HONORABLE JOSEPH H. RODRIGUEZ,  
UNITED STATES DISTRICT COURT JUDGE:

The Official Committee of Asbestos Property Damage Claimants (the "Property Damage Committee") for the above-captioned Debtors (the "Debtors") hereby seeks to modify the Order Pursuant to 11 U.S.C. §§ 327 (a) and 328(a) Approving the Retention and Employment of Navigant Consulting, Inc. ("Navigant") as Asbestos Claims Consultants for the Official Committee

of Asbestos Property Damage Claimants, nunc pro tunc to October 26, 2004, as amended (the "Order"). Specifically, by this Application the Property Damage Committee requests that the limitation on fees previously imposed by the Bankruptcy Court be eliminated so that Navigant may adequately assist the Property Damage Committee in connection with the expanded estimation hearing. In support of this application, the Property Damage Committee respectfully represents as follows:

### **Background**

1. On October 1, 2001 (the "Commencement Date"), the Debtors and their related affiliates filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, Debtors are operating their businesses and managing their properties as debtors in possession.
2. Contemporaneously with the filing of the chapter 11 cases, the Debtors filed for administration proceedings before the High Court of Justice (the "High Court") in the United Kingdom (the "U.K. Administration Proceedings") for the Debtors located in that jurisdiction (the "U.K. Debtors").
3. The Debtors were forced to seek protection under the Bankruptcy Code and the U.K. Administration Proceedings due to the large number of asbestos claims filed against the Debtors and the amounts demanded by asbestos plaintiffs' lawyers to settle their cases.
4. On October 16, 2003, pursuant to section 1102(a) of the Bankruptcy Code, the U.S. Trustee appointed the Property Damage Committee, consisting of five (5) members, to serve asbestos property damage claimants in the Debtors' chapter 11 cases. The members of the Property

Damage Committee are: Anderson Memorial Hospital, Jacksonville College, Moxie Real Estate, Richard Blyth, and The Hill School.

### **Relief Requested and Argument**

5. By prior application (the “Retention Motion”) filed with the Bankruptcy Court, the Property Damage Committee sought to retain Navigant as asbestos claims consultants in these chapter 11 cases. In response to the Retention Motion, the Plan Proponents<sup>1</sup> filed a Limited Objection (the “Limited Objection”) requesting that this Court impose an aggregate cap on the fees incurred by Navigant. This cap, as proposed by the Plan Proponents, would be exclusive of those fees incurred by Navigant with respect to deposition and hearing testimony.

6. On November 9, 2004, a hearing was held on the Retention Motion. At the hearing, the Bankruptcy Court approved the retention of Navigant, but sustained the Limited Objection without argument and imposed an aggregate limitation of \$156,000 on Navigant’s fees, exclusive of those fees incurred by Navigant with respect to deposition and hearing testimony (the “Fee Cap”), with the qualification that the decision was “without prejudice to the rights of the Property Damage Committee, [Navigant], or the Plan Proponents to petition [the] Court for a further modification of the terms of [Navigant]’s retention in the event the limitations imposed herein appear improvident in light of unforeseen circumstances.” An order approving the retention, but sustaining the Limited Objection, was entered on January 4, 2005 (the “Retention Order”).

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<sup>1</sup> The Plan Proponents include Federal-Mogul Corporation and its affiliated US and UK Debtors, the Official Committee of Unsecured Creditors, the Official Committee of Asbestos Claimants, the Legal Representative for Future Asbestos Claimants, JPMorgan Chase Bank as Administrative Agent for the prepetition lenders, and the Official Committee of Equity Security Holders.

7. The Fee Cap was based on a good faith estimate by Navigant of the fees required to analyze the Debtors' liability for asbestos personal injury claims, given the information available and the posture of the Debtors' cases at the time of the Retention Motion. During the course of its retention, Navigant worked in an efficient and cost-effective manner, making every effort to minimize costs to the estate. Due to unforeseen circumstances, including last-minute production by the Debtors of information relating to thousands of previously unknown bodily injury claims, Navigant exceeded the Fee Cap by a small amount. In accordance with the Retention Order, the Property Damage Committee filed a motion to modify the Fee Cap and to authorize the payment of fees in excess of the Fee Cap (the "Initial Motion to Modify"). By order dated February 15, 2005 (the "Amended Order"), the Bankruptcy Court expanded the Fee Cap to \$184,207.50 and reiterated that the cap was without prejudice to the right of the Property Damage Committee to request further modification.

8. In light of the expansion of the scope of the estimation hearing in this case, and to take account of developments since preparation of its initial estimate, including new case law on estimation of asbestos bodily injury claims, the Property Damage Committee has requested that Navigant perform additional services. Pursuant to the Court's Case Management Order dated March 30, 2005, Navigant will submit a supplemental expert report on April 26, 2005, as will the Plaintiff's expert. Rebuttal reports are due May 10, 2005. The substantial additional work required of Navigant requires modification of the previously imposed cap on its fees.

9. The Property Damage Committee respectfully submits that no cap on Navigant's fees is necessary. Navigant has provided cost-effective services to the Property Damage Committee and has performed its estimate at far less expense than any of the other consultants providing

similar services to other constituencies in these cases. For example, Legal Analysis Systems, Inc., the asbestos claims consultant retained by the Official Committee of Asbestos Claimants, has billed over \$1.3 million and is subject to no cap on its fees. Analysis Research Planning Corporation, consultant to the Legal Representative for future Asbestos Claimants, has billed over \$2 million and similarly is subject to no cap. Thus, the Property Damage Committee's opponents in this litigation are not hampered by any limitation on the costs their claims consultants incur.<sup>2</sup> Under these circumstances, the Fee Cap imposed on Navigant and the Property Damage Committee should be eliminated for purposes of the estimation hearing.

10. WHEREFORE, the Applicant respectfully requests that this Court enter an order amending the retention of Navigant as asbestos claims consultants to the Property Damage Committee in these proceedings, and lifting the Fee Cap with respect to work performed for the estimation hearing.

Dated: Wilmington, Delaware  
April 20, 2005

FERRY, JOSEPH & PEARCE, P.A.

/s/ Theodore J. Tacconelli  
Theodore J. Tacconelli (No. 2678)  
Rick S. Miller (No. 3418)  
824 Market Street, Suite 904  
Wilmington, DE 19801  
(302) 575-1555

-and-

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<sup>2</sup> A fee limitation has been imposed on only one other asbestos claims consultant in these chapter 11 cases. On June 4, 2002, the Bankruptcy Court entered an order limiting the fees incurred by Bates, White & Ballantine, the Unsecured Creditors Committee's asbestos claims consultant, to \$500,000 for all fees incurred after May 1, 2002. The fees incurred by Bates White prior to May 1, 2002 were approximately \$665,000. All told, an expert who, in the end, will not even testify in this case because the Unsecured Creditors Committee is not participating in the estimation hearing, has received authorization to bill \$1.165 million, while the Property Damage Committee, which is the only party opposing the Plan Proponents estimate, has been limited to less than 20% of this amount.

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CO-COUNSEL FOR THE OFFICIAL  
COMMITTEE OF ASBESTOS  
PROPERTY DAMAGE CLAIMANTS

**CERTIFICATE OF SERVICE**

I, Theodore J. Tacconelli, certify that I am not less than 18 years of age, and that service of this *Application to Modify the Order Pursuant to 11 U.S.C. §§ 327(a) and 328(a) Approving the Retention and Employment of Navigant Consulting, Inc. as Asbestos Claims Consultants for the Official Committee of Asbestos Property Damage Claimants, Nunc Pro Tunc to October 26, 2004* was made on April 20, 2005, upon the following parties in the manner indicated:

SEE ATTACHED 2002 SERVICE LIST

Under penalty of perjury, I declare that the foregoing is true and correct.

/s/ Theodore J. Tacconelli  
Theodore J. Tacconelli (No. 2678)

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